

MEMORANDUM

To: Federal Agencies, State Agencies, and Consultants Conducting Consultation on behalf of Federal/State Agencies

From: Wilson Martin, Utah State Historic Preservation Officer (SHPO)

Date: January 18, 2007

Subject: Operating Procedure for Submission of Archaeological and Building Survey Reports to the Utah SHPO as part of consultation under Section 106 of the National Historic Preservation Act and/or Utah Code 9-8-404

cc:

This memo describes the UT SHPO office procedures when reports are received in our office and makes recommendations for efficient submission of archaeological and building survey reports as part of consultation with our office under the National Historic Preservation Act or Utah Code 9-8-404. In summary, we recommend that reports be submitted to our office directly by the involved federal or state agency(ies) along with correspondence requesting consultation. If a consultant is acting on behalf of a federal or state agency and has been required to submit reports and conduct consultation directly to our office, we recommend that the consultant very clearly state the name of the involved federal or state agency(ies) in their cover letter and very clearly indicate that they are acting on behalf of the involved agency(ies).

Background

A variety of informal and formal past practices have led to many consultants submitting archaeological and/or building inventory reports directly to our office. In some cases, a letter will follow from a federal or state agency requesting consultation. In other cases, the consultant is acting on behalf of a federal or state agency.

This practice has become extremely problematic due to an increased caseload. Currently our practice is that when a report is received directly from a consultant with no agency request for consultation, or no clear indication that the consultant is acting on behalf of a specific federal or state agency, we place these reports into a holding area. As no agency request for consultation has been received for these reports, per 36CFR800.4(c)(2), 36CFR800.5(c)(1), or Utah Code 9-8-404(1)(a)(ii), we do not consider consultation to have been initiated or the 30-day review period to have begun for these submissions. When we do receive agency requests for consultation on these reports (or requests clearly made on behalf of an agency), the 30-day review period begins, we attempt to unite the reports with the requests and then we initiate our review.

Due to an extremely high caseload, there is potential within this system for reports to become lost, misplaced, or not associated with consultation requests. Furthermore, uniting reports with letters also adds time to the review process, and reduces review efficiency. We wish to stress that per the National Historic Preservation Act and Utah State Code 9-8-404 consultation takes place between

our office and federal or state agencies (or entities who have been delegated consulting authority). While we are always happy to receive reports from any persons conducting inventories, we cannot guarantee that reports received without consultation requests from federal or state agencies will be united with any later consultation requests. Thus, we make the following recommendations for agencies and consultants.

Recommendations

- (1) Consultation requests that involve associated archaeological or buildings inventory reports are best sent directly by the federal or state agency. We recommend that the consultation request include both the request itself (generally a cover letter) and the report itself with any associated data (e.g. IMACS forms, ILS, RLS forms, etc.).
 - a. We do not recommend that consultants send reports directly to our office, unless they have been delegated consultation directly by the agency in question or unless prior arrangements have been made.
 - i. We understand that past practice with some agencies entailed submission by consultants directly to our offices. However, we have discussed these issues with the agencies in question and the new recommendation is for the agencies, not the consultants, to submit reports to us.
- (2) If a consultant is acting on behalf of a federal or state agency and has been delegated authority by that agency to consult with our office on the agency's behalf, we recommend that, in addition to submitting the archaeological report, the cover letter requesting consultation should clearly state that the consultant is acting on behalf of the agency in question. Simply stating that the consultant is enclosing a report for a particular private client and making recommendations will generally not clearly indicate to us that the consultant is requesting consultation on behalf of an agency. We recommend using language such as "On behalf of the Federal Communications Commission, we are conducting consultation under Section 106 of the National Historic Preservation Act" or "On behalf of the Utah Division of Water Rights, we are conducting consultation under Utah Code 9-8-404" to clearly indicate that the consultant is acting on behalf of an agency and to name the agency.
 - a. Submission of pre-approved consultation documents, such as the FCC Form 620 for cell tower consultation, does adequately notify our office that the consultant is acting on behalf of an agency.
- (3) If a consultant or any individual is simply submitting a report to our office to be placed into our files, and the report does not involve any federal or state consultation, please simply state that the report is for our information only (and we thank you in advance!).

We understand that these recommendations are different from many common, informal, past practices. We understand that it may take some time for this information to be disseminated and for practices to change. We will continue to attempt to unite reports with consultation letters (though, as described above, we make no guarantees as to our efficiency in this regard). If we are unable to unite a report with a consultation letter, we may respond with a letter requesting the report, indicating that we have incomplete information to conduct a review. We appreciate the consideration of these recommendations and hope that they lead to more efficient consultation with our office.